PENDAFTAR HAKMILIK NEGERI PERAK PEJABAT PENGARAH TANAH DAN GALIAN BANGUNAN SERI PERAK DARUL RIDZUAN JALAN PANGLIMA BUKIT GANTANG WAHAB 30000 IPOH, PERAK
v. WONG SEW LING & ORS

COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN PARAMAGURU JCA
COLLIN LAWRENCE SEQUERAH JCA
AHMAD KAMAL MD SHAHID JCA
[CIVIL APPEAL NO: A-01(NCVC)(A)-102-03-2023]
10 JANUARY 2025

Abstract – *The State Authority, having approved an application for a proposed conversion of the category of land use and sub-division of land, and in the process of re-alienation of the land, may not reduce the tenure of the original title held in perpetuity to a term not exceeding 99 years. To do so would be ultra vires the provision of s. 204E(3) of the National Land Code and against the prohibition under art. 13(1) of the Federal Constitution.*

LAND LAW: *Title – Surrender of title – Lands originally for terms in perpetuity or freehold – Allegation by subsequent purchasers that status of lands changed to 99 years leasehold – Whether State Authority has power to reduce tenure of lands from freehold to leasehold, having alienated lands to be held in perpetuity – Whether ultra vires s. 204E(3) of National Land Code – Whether within prohibition under art. 13 of Federal Constitution – Whether reduction of tenure null and void*

The original landowners in respect of the lands in question held them previously under four documents of title. The original landowners, intending to develop the lands into a housing scheme, the status of which at that time were for terms in perpetuity or freehold, surrendered the documents of title to the State Authority. The respondents purchased the properties from a housing developer somewhere in the 1980s. The status of the land at the time of purchase was leasehold for a period of 99 years. The respondents filed the present action seeking a declaration that each of the properties purchased by them and registered as leasehold for a term of 99 years to be declared null and void and sought an order that the Land Administrator replace their titles for a period of 99 years with titles in perpetuity (freehold). It was the respondents' contention that when the individual titles were issued, there was a mistake because the land title status ought to have been for a term in perpetuity (freehold), rather than a term of leasehold for 99 years. The appellant, however, contended that when the original developer/landowner had agreed to the condition imposed by the State Authority that the lands

were given back in the form of leasehold for a term of 99-years, the respondents were now estopped from claiming to have the lands reconverted back to freehold. The main issue in this appeal was whether or not a State Authority, when approving a proposed conversion of category of land use and sub-division of land and in the process of re-alienating the land, may reduce its tenure from a term in perpetuity to a term of years not exceeding 99 years or in other words, from freehold to leasehold.

Held (dismissing appeal with costs)
Per Collin Lawrence Sequerah JCA delivering the judgment of the court:

(1) It was held in the cases, amongst others, *Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd,* that once the State Authority approved a proposed conversion of category of land use and sub-division of land and in the process of re-alienating the land, may not reduce its tenure from a term in perpetuity to a 99-year lease. To do so would be *ultra vires* the provision of s. 204E(3) of the National Land Code ('NLC'). The doctrine of estoppel had no place where the act is *ultra vires*. Hence, the fact that consent (in an application to convert a part of its land to the category of land use to that of commercial, and in its application for sub-division agreed for the rest of the land to be converted from freehold to leasehold) was given, did not bar the plaintiff from challenging that the reduction in tenure from freehold to leasehold was a nullity. Also, the law of limitation is not applicable where the decision being challenged is illegal or *ultra vires*. (paras 20, 22, 24 & 26)

(2) The argument on the principle of *caveat emptor* or 'let the buyer beware', being more suited to a case in contract and in private law, has no place in the matter of land law which is a matter of public law. It had therefore no application to the facts of this case. (para 28)

(3) Clause (1) of art. 13 of the Federal Constitution prevents any arbitrary confiscation or deprivation of property unless it is expressly sanctioned by the law. This placed the actions of the State Authority in converting the land status from a term in perpetuity to that of a 99-year lease after re-alienation, squarely within the prohibition of art. 13 as being in direct contravention of s. 204E(3) of the NLC. (paras 30 & 31)

Case(s) referred to:
Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd [1995] 4 CLJ 283 FC ***(refd)***
Chin Kim Phin v. Director Of Lands & Surveys, Sabah & Anor [2020] 6 CLJ 243 HC ***(refd)***
Leo Leslie Armstrong (Sebagai Presiden Dan Pemegang Jawatan The Young Men's Christian Association Of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v. Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (Yang Dahulunya Di Pegang Oleh Majlis Mesyuarat Kerajaan Negeri Selangor) [2015] 2 CLJ 10 CA ***(refd)***

Ngo Ong Chung & Ors v. Pengarah Tanah Dan Galian Perak Darul Ridzuan [2013] CLJU 146; [2013] 1 LNS 146 HC ***(refd)***
Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] CLJU 143; [1978] 1 LNS 143 FC ***(foll)***

Legislation referred to:
Federal Constitution, arts. 4(1), 8(1), 13
National Land Code, s. 204E(3)

For the appellant - Mohd Fitri Sadarudin; Perak State Legal Advisor
For the respondents - Norazura Mohamed Mokhtar & Nurareena Said; M/s Azura Mokhtar & Low

[Editor's note: For the High Court judgment, please see Wong Sew Ling & Ors v. Pendaftar Hakmilik Negeri Perak [2023] CLJU 400; [2023] 1 LNS 400 (affirmed).]

Reported by S Barathi

JUDGMENT

Collin Lawrence Sequerah JCA:

Introduction

[1] The short issue in this appeal is whether or not a State Authority, when approving a proposed conversion of category of land use and sub-division of land and in the process of re-alienating the land, may reduce its tenure from a term in perpetuity to a term of years not exceeding 99 years or in other words, from freehold to leasehold?

[2] This is a unanimous decision.

Background Facts

[3] The original landowners in respect of the lands in question held them previously under four documents of title under certificate of title ("CT") 19426 Lot 10304, CT 25458 Lot 10220, CT 25459 Lot 10221 and CT 25460 Lot 12222, respectively.

[4] The original landowners had the intention to develop the lands into a housing scheme. At that time, the status of the lands were for terms in perpetuity or freehold.

[5] The original landowners surrendered the CTs to the State Authority for the purpose of developing the lands into a housing scheme on the following dates:

Certificate of Title ("CT")	Date Of Surrender
CT 19426 Lot 10304	07.11.1978
CT 25458 Lot 10220	28.10.1977
CT 25459 Lot 10221	18.11.1977
CT 25460 Lot 12222	24.02.1982

A **[6]** The respondents were the purchasers of the properties developed/built by the landowners. They purchased the properties from a housing developer somewhere in the 1980s. The status of the land at the time of purchase was leasehold for a period of 99 years.

B **[7]** The respondents filed the current action seeking a declaration that each of the properties purchased by them and registered as leasehold for a term of 99 years to be declared null and void. They also sought an order that the Land Administrator replace their titles for a period of 99 years with titles in perpetuity (freehold).

C **[8]** The respondents contended that when the individual titles were issued, there was a mistake because the land title status ought to have been for a term in perpetuity (freehold), rather than a term of leasehold for 99 years.

Parties Submissions

[9] The position taken by the appellant is essentially twofold.

D **[10]** First, that of estoppel.

[11] The appellant contends that when the original developer/landowner had agreed to the condition imposed by the State Authority that the lands were given back in the form of leasehold for a term of 99 years, the E respondents are now estopped from claiming to have the lands reconverted back to freehold.

[12] The appellant cited *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd* [1995] 4 CLJ 283 in support.

F **[13]** Secondly, the appellant invokes the maxim, *caveat emptor*. The appellant asserts that when the respondents bought the lands from the original developer/landowner, it was their duty as the purchasers to practice due diligence in conducting a search and inspection as to the nature, condition or defects of the land before they decided to purchase the lands.

G **[14]** Having failed in that endeavour, the appellant submitted that the principle of *caveat emptor* or "let the buyer beware" would apply and therefore, the respondents cannot now complain that the status of the lands ought to have been freehold.

[15] The respondents were at liberty to not proceed with the sale and H purchase agreements if they were unagreeable to the 99 years lease period.

[16] The respondents, on the other hand, submitted that the State Authority was not empowered under the National Land Code (NLC) nor had they have the discretionary power to alter the land tenure from its status as freehold to leasehold of 99 years.

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[17] The respondents further submitted that a plea of estoppel is not available when the act complained of is *ultra vires*.

Analysis And Decision

[18] As stated at the outset, the main issue in this appeal is whether or not a State Authority, when approving a proposed conversion of category of land use and sub-division of land and in the process of re-alienating the land, may reduce its tenure from a term in perpetuity to a term of years not exceeding 99 years or in other words, from freehold to leasehold?

[19] We were fortunate that we did not have to wrestle with the horns of this dilemma without the assistance of good authority, (as eloquently put in a famously decided case by the Privy Council).

[20] The cases in point are the case of *Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] CLJU 143; [1978] 1 LNS 143; [1979] 1 MLJ 135, and the case of *Leo Leslie Armstrong (Sebagai Presiden Dan Pemegang Jawatan The Young Men's Christian Association Of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v. Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (Yang Dahulunya Di Pegang Oleh Majlis Mesyuarat Kerajaan Negeri Selangor)* [2015] 2 CLJ 10 where it was held that to do so would be *ultra vires* the provision of s. 204E(3) of the National Land Code and this was what the case held:

> (3) If the State Authority decides to approve the application, whether as originally submitted or as amended pursuant to subsection (2), the State Authority shall proceed to determine, in respect of each portion or unit to be re-alienated, the matters specified in sub-section (2) of section 79, as if the land comprised in the unit had already become State land:
>
> **Provided that where the original title is a title in perpetuity, the period for which the land is to be re-alienated shall also be in perpetuity**, and where the original title is for a period of years, the period for which the land is to be re-alienated shall not be less than the remainder of the period of the lease for which the land was held under the original title.
>
> (emphasis added)

[21] The case of *Chin Kim Phin v. Director Of Lands & Surveys, Sabah & Anor* [2020] 6 CLJ 243 was on all fours with the facts of the instant case and followed the *ratio* in *Sri Lempah* (*supra*) which held that the appellant in that case had no power to impose the condition requiring the respondent to give up its freehold title and to receive in exchange, a 99-year lease such condition being *ultra vires*.

[22] We are therefore in agreement with the learned High Court Judge that the principle in the *Sri Lempah* case applies.

[23] The learned High Court Judge (HCJ) further recognised that the doctrine of estoppel had no place where the act is *ultra vires* when he held in his grounds of judgment the following:

> That the registered proprietor may have earlier consented to have it converted from freehold to leasehold is not a bar for an action to have it reconverted back to freehold. In other words, the earlier consent would not operate to estop the registered proprietor from suing for the land to be reconverted back to freehold.

[24] We see no good reason to disagree with His Lordship. His Lordship's findings were supported by authority when he cited the case of *Leslie Leo Armstrong* (*supra*) and held that the fact such a consent (in an application to convert a part of its land to the category of land use to that of commercial, and in its application for sub-division agreed for the rest of the land to be converted from freehold to leasehold) was given, does not bar the plaintiff from challenging that the reduction in tenure from freehold to leasehold was a nullity.

[25] In the case of *Ngo Ong Chung & Ors v. Pengarah Tanah Dan Galian Perak Darul Ridzuan* [2013] CLJU 146; [2013] 1 LNS 146, it was held, on roughly similar facts, the following:

> For the reasons stated, consent, waiver or estoppel cannot prevail over the principle of *ultra vires*.

[26] The HCJ further held that, also based upon the authority of *Leo Leslie Armstrong* (*supra*), it was settled law that the law of limitation is not applicable where the decision being challenged is illegal or *ultra vires*.

[27] Again, we find no good reason to disagree with the findings of the learned HCJ.

[28] The argument raised by learned counsel for the appellant that the principle of *caveat emptor* or "let the buyer beware" being more suited to a case in contract and in private law, has no place in the matter of land law, which is a matter of public law. It had therefore no application to the facts of this case.

[29] There is also a constitutional dimension to the subject matter of this appeal and that is encapsulated in art. 13 of the Federal Constitution, which reads as follows:

> Rights to property.
>
> (1) No person shall be deprived of property save in accordance with law.
>
> (2) No law shall provide for the compulsory acquisition or use of property without adequate compensation.

[30] In particular, it is cl. (1) which warrants attention here. The clause prevents any arbitrary confiscation or deprivation of property unless it is expressly sanctioned by the law.

[31] This places the actions of the State Authority in converting the land status from a term in perpetuity to that of a 99 years lease after re-alienation, squarely within the prohibition of art. 13 as being in direct contravention of s. 204E(3) of the NLC.

[32] The learned HCJ further alluded to the fact that the respondents had asserted that their neighbours had secured freehold titles under somewhat similar circumstances and would have of course expected similar treatment in respect of their titles.

[33] The learned HCJ in this respect placed reliance upon arts. 4(1) and 8(1) in affirming the constitutional guarantees with regard to the supremacy of the Constitution and the equality of the law and the fact that all are entitled to equal protection of the law in coming to his findings.

[34] We affirm the correctness of the HCJ's findings in that respect.

[35] Our answer to the question posed at the outset and constituting the main issue in this appeal, is therefore in the negative.

[36] In the premises and for the reasons advanced, we dismissed the appeal with costs of RM5,000.